

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1085

To be argued by
MARTIN E. GOTKIN

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

JOHN MORRIS, a/k/a "PAPERS",

Defendant-Appellant.

*On Appeal from the United States District Court for the
Southern District of New York.*

BRIEF AND APPENDIX FOR APPELLANT

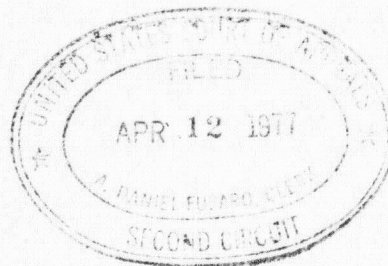
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Questions Presented

- I Did the Court below err in not dismissing the indictment on the grounds that although the indictment charges single conspiracy, multiple conspiracies were shown at the trial?
- II Did the Court err in not precluding the government from introducing testimony which could only be rebutted by Appellant, Morris, taking the stand and admitting he was in prison?
- III Did the Court err in not declaring a mistrial as to Appellant, Morris, after a co-counsel during cross-examination of a witness brought out the fact that the Appellant, Morris, had served time in prison?
- IV Appellant, Morris, adopts all other arguments of co-counsel having relevance and application.

STATEMENT PURSUANT TO RULE 28(3)

Preliminary Statement

APPELLANT, JOHN MORRIS, appeals from a judgment of the United States District Court, Southern District of New York (Owen, J.) convicting him of conspiring to distribute and sell narcotics in violation of 21 USC Sections 173, 174, 812, 841(a)(1) and 841(b)(1a), 951, 952 and 960.

APPELLANT was sentenced to a period of imprisonment of ten (10) years, to be followed by a three-year period of special probation.

Facts

The Appellant was indicted along with 32 other defendants and was ultimately tried in a massive narcotics conspiracy trial along with 23 of those defendants. The conspiracy involved a vast number of people, and covered activities over a period of eight (8) years, along almost the entire eastern seaboard, from upstate New York, to Miami, Florida. The trial transcript ran to almost 10,000 pages and involved a multitude of witnesses and hundreds and hundreds of pages of exhibits relating to multi-kilogram dealings in drugs.

The Appellant, JOHN MORRIS, was named in two counts of the indictment; the conspiracy count (Count 1) and one substantive count (Count 25). He was acquitted of the substantive count and only convicted of the conspiracy count. There were no narcotics ever introduced at the trial. which

defendant, MORRIS, ever allegedly sold or dealt with and no monies were ever introduced which Appellant ever received or paid out for drugs.

In addition, it was brought out at trial that Appellant never had any alleged dealings except in New York City, although it was the theory of the government's case to show that a conspiracy existed to distribute drugs along the entire eastern seaboard. The government attempted to show that there was a conspiracy among the defendants to distribute narcotics in various places in upstate New York, (for example, i.e. Orangeburg, New York); New York City; New Jersey; Washington D.C.; Chicago, Illinois and Miami, Florida. However, the evidence clearly showed that Appellant, MORRIS, never had any dealings whatsoever outside of New York City and that the only dealings in New York City involved small amounts of cocaine, measured in ounces and consistent with personal use and not kilogram quantities, which could link him to a conspiracy such as was charged in the indictment.

Indeed, the main witness of the government, Jack Brown, admitted that he only dealt with the Appellant, MORRIS, in New York City and that Appellant never had anything to do with any other location and had nothing to do with Orangeburg, New York, New Jersey, Washington, Chicago or Florida (T. 2313-14).*

It is Appellant, Morris', position (Point I), that he had nothing to do with any narcotics conspiracy and that the format of the government's indictment and the massive trial

*References are to pages in Trial Transcript.

which brought in far-ranging transactions in other states of which the Appellant knew nothing was grossly unfair to the Appellant and this, coupled with the other points discussed below requires that the judgment against Appellant, JOHN MORRIS, be reversed.

POINT I

THE CONVICTION OF THE APPELLANT MORRIS SHOULD BE REVERSED AND THE INDICTMENT DISMISSED ON THE GROUNDS THAT ALTHOUGH THE INDICTMENT CHARGES SINGLE CONSPIRACY, MULTIPLE CONSPIRACIES WERE SHOWN AT THE TRIAL.

The instant case clearly clashes with the often repeated warnings that the type of mass conspiracy trial had herein is fundamentally unfair and that the government must stop using such a format in its prosecutions.

Thus, this Court stated in United States v. Sperling, 506 F. 2d 1323 (2d Cir. 1974) at page 1340 as follows:

"In view of the frequency with which the single conspiracy vs. multiple conspiracies claim is being raised on appeals before this court, . . . we take this occasion to caution the government with respect to future prosecutions that it may be unnecessarily exposing itself to reversal by continuing the indictment format reflected in this case. While it is obviously impractical and inefficient for the government to try conspiracy cases one defendant at a time, it has become all too common for the government to bring indictments against a dozen or more defendants and endeavor to force as many of them as possible to trial in the same proceeding on the claim of a single conspiracy when the criminal acts could be more reasonably regarded as two or more conspiracies, perhaps with a link at the top. Little time was saved by the government's having prosecuted the offenses here involved in one rather than two conspiracy trials. On the contrary, many serious problems were created at the trial level, including the inevitable debate about the single conspiracy charge, which can prove seriously detrimental to the government

itself. We have already alluded to our problems at the appellate level, where we had to comb through a voluminous record to give adequate consideration to the claims of eleven separate appellants." (Emphasis supplied.)

Kotteakos v. United States, 328 U.S. 750 (1946).

United States v. Bertolotti, 529 F. 2d 149 (2d Cir. 1975).

United States v. Miley, 513 F. 2d 1191 (2d Cir. 1974).

In Miley, supra, the Court warned that the mass conspiracy format was "ill advised" and invited reversals. (pg. 1195, 1201, n. 10, 1210).

It is submitted that on the entire record the Appellant, MORRIS', dealings in drugs was personal and isolated and had nothing to do with the defendants that are involved in other states and other places outside of New York City and he was not part of the multiple conspiracies charged and tried by the government.

POINT II

THE COURT ERRED BY PERMITTING THE GOVERNMENT TO INTRODUCE EVIDENCE AGAINST THE APPELLANT, MORRIS, WHEN THE GOVERNMENT AND THE COURT KNEW IN ADVANCE OF THE INTRODUCTION OF SAID EVIDENCE THAT IN ORDER FOR THE APPELLANT TO REFUTE SAME, HE WOULD HAVE TO TAKE THE STAND AND ADMIT HE WAS IN PRISON.

Prior to the trial, the government informed counsel for Appellant, by letter dated June 9, 1976, that "At the trial of this case, witnesses will testify that Mr. Morris was present during the sale of a quantity of heroine by Solon Glaze in the vicinity of the Kasbah Lounge, 55 W. 106th St., NYC on April 19, 1974, and that a car registered to your client was used during that transaction." (A-4)* Subsequently, counsel for Appellant, after investigation, received a letter from the New Jersey State Prison at Rahway, New Jersey, dated June 29, 1976 (A-10), which indicated that Appellant was a "resident" of that institution from November 21, 1973 to July 9, 1974, and that during that time, he received furloughs on various days, including the period of April 17, 1974 to April 20, 1974.

During the trial, the government called Dorothy Johnson, a detective in the New York City Police Department, who testified that she worked as an undercover agent for the New York Drug Enforcement Task Force.

The witness testified to a drug transaction with defendant, Solon Glaze, at the Kasbah Lounge on April 19, 1974, wherein, Solon Glaze, used a green Eldorado Cadillac in the

*References are to Appendix pages.

transaction, which car was owned by JOHN MORRIS . However, counsel, being aware of where the government's questioning was leading, strenuously objected (T. 5522-5543). At the side bar and at the bench out of the presence of the jury, counsel showed the letter from Rahway State Prison to the Court and the government and explained to them that the car was given to defendant, Solon Glaze to use in July, 1973, while Appellant, MORRIS, was in prison, and that MORRIS had no control over the automobile on the night of April 19, 1976. In addition, if the jury was permitted to hear that MORRIS' car was used, they, of course, would conclude that MORRIS and not Glaze or both together were dealing with drugs at that time. Counsel forcefully stated his argument to the Court and even asked for a stipulation from the government that defendant, Solon Glaze had been using Appellant's, MORRIS' car from July, 1973 until July, 1974 and that MORRIS did not have control of the automobile during that time. The government refused to so stipulate and the Court overruled counsel's objection. (A-8).

The appellant, MORRIS , therefore, had the unenviable choice of either surrendering his right to remain silent by taking the stand to explain the fact that he was in prison or not taking the stand and leaving in the juror's minds that he was dealing on that day in narcotics. Clearly, that was no choice at all and it is respectfully submitted that the Court

below erred in permitting the testimony of Detective Dorothy Johnson to be received over counsel's objections. This was especially damaging to the Appellant, MORRIS, when considered in the light of the fact that one of the government's main witnesses, Marion Ladd, testified that she was, at that time in April, 1974, working undercover for the Drug Enforcement Task Force and that although she attempted to involve Appellant, MORRIS in illegal drug transactions, she could not (T. 5077-5083). Thus, we have the sorry spectacle of a man completely innocent of any involvement in the Solon Glaze transactions of 1974 at the Kasbah Lounge being painted by the government as being involved therein when he could not rebut those charges.

POINT III

THE CASE AGAINST APPELLANT MORRIS WAS
PREJUDICED BY THE CROSS EXAMINATION OF
A WITNESS BY CO-COUNSEL WHICH BROUGHT
OUT THE FACT THAT APPELLANT MORRIS HAD
SERVED TIME IN PRISON.

During cross examination of Jack Brown by counsel for the defendant, MOTEN, the following took place: (A 1)

Q. Whom were you in jail with that you had known from the street, let's say before your incarceration? Were there any people in Atlanta that you knew?

A. Papers. . .

Mrs. Rosner. I withdraw it."

Counsel for Appellant, MORRIS, then requested a mistrial, a severance and that the answer be stricken (A 1 and A 3). The Court denied the motion for a mistrial and severance but struck the answer and directed the jury to: "Put it from your minds and disregard it and consider as if it had never been spoken. Disregard it in your consideration of this case." (A 1, A 2)

It would be naive to believe that this fact of the Appellant having served time in a Federal Penitentiary with Jack Brown, the government's main witness did not weigh heavily against the defendant-appellant, MORRIS and prejudice the jurors against him. The Court's instructions did not cure the prejudice to the Appellant. Clearly, the Appellant's right to a fair trial was violated since he chose not to take the

stand in his own defense and the Court should have granted a mistrial.

POINT IV

APPELLANT, MORRIS, ADOPTS ALL RELEVANT
POINTS RAISED BY THE CO-APPELLANTS.

CONCLUSION

FOR THE ABOVE REASONS, THE COURT SHOULD REVERSE
THE JUDGMENT OF CONVICTION BELOW AND DISMISS THE INDICTMENT.

Respectfully submitted,

Dated April 4, 1977

MARTIN E. GOTKIN
Attorney for Defendant-Appellant
JOHN MORRIS
250 West 57th Street
New York, New York 10019
(212) 541-8390

EXCERPTS FROM TRIAL TRANSCRIPT

1673

mps

Brown - cross

1 drugs because the pressure was too much for your mind?

2 A Not at all.

3 Q You don't recollect that?

4 MR. BELLER: Objection.

5 THE COURT: Sustained.

6 Q Now, when you got in Atlanta Penitentiary,
7 just before you were released, you had already begun making
8 plans, hadn't you, to resume your narcotics activities as
9 soon as you were released?
10

11 A No. I was too happy to get out of jail.

12 Q You hadn't done that?

13 A No; not at all.

14 Q Whom were you in jail with that you had known
15 from the street, let's say, before your incarceration?
16 Were there any people in Atlanta that you knew?

17 A Papers --

18 MR. BELLER: Your Honor, may we approach the
19 bench?

20 MRS. ROSNER: I withdraw it.

21 MR. GOTKIN: I ask that the answer be stricken
22 and the jury instructed to disregard it.

23 THE COURT: Yes.

24 Ladies and gentlemen, we will strike the
25 answer. Put it from your minds and disregard it and

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mps Brown - cross 1674
consider as if it had never been spoken. Disregard
it in your consideration of this case.

MR. GOTKIN: Your Honor, I would also ask
counsel to come to the side bar and give a reason why the
question was asked.

THE COURT: I will deny that at this time.

(Continued on next page.)

A2

T7 am

1

mps

Brown - cross

1955

2

(In the absence of the jury:)

3

(At the bench, the Court and Mr. Gotkin

4

present.)

5

MR. GOTKIN: Your Honor, may I on the record

6

correct an error in yesterday's transcript?

7

THE COURT: What is the error?

8

MR. GOTKIN: The error is this, your Honor;

9

That the record at page 1673 is in error in

10

that after Mrs. Rosner asked the question:

11

"Whom were you in jail with that you had

12

known from the street, let's say, before your

13

incarceration? Were there any people in

14

Atlanta that you knew?

15

"A Papers."

16

After that I asked for a mistrial or, in lieu

17

thereof, a severance, and then I asked you to strike that.

18

THE COURT: At 1673 -- yes, I recall you

19

moved for a mistrial.

20

MR. GOTKIN: And I moved to strike the answer.

21

THE COURT: Yes. The record may show that

22

you did make those motions. I granted the motion to

23

strike, but I denied the motions for a mistrial.

24

(In open court.)

25

THE COURT: All right. Let's get the jury in.

1 dwh 21 Johnson-direct

2 about six or seven minutes.

3 (Recess)

4 (In open court. Discussion at the bench.)

5 MR. GOTKIN: I didn't have time to go through
6 all the 3500, but what I've gone through so far and what
7 I've learned the government is putting me in a very unfair
8 position, a difficult position because as I told your Honor
9 my defendant was on furlough from Rahway State Prison.

10 Now even though the Eldorado may have been his,
11 he loaned this to Solon Glaze when he went into prisons
12 months before, your Honor.

13 So then I'm faced with the dilemma that that's
14 establishing that it's John Morris' car and the jury draws
15 the inference that he was part and parcel of this drug
16 transaction. I'm not faced with having to show in some
17 way, which as yet I don't know how I am going to do it,
18 that when John Morris was in prison months and months before
19 this ever took place that he let Solo Glaze use his car,
20 your Honor, which is a perfectly reasonable thing, perfectly
21 logical explanation.

22 So I think, your Honor, it unfair of the
23 government to come in and try to show he was part of this
24 transaction because he happened to be using his car. He
25 let the car with Solo and went to prison in July, 1973.

2 That's almost a year before this ever happened, your Honor.

b5 3 Now what am I supposed to do? How am I supposed to refute
4 something like this?

5 MS. CUSHMAN: I believe there's testimony that
6 Mr. Morris had been quite anxious to have Mr. Glaze come
7 back by 9 o'clock because Mr. Morris had to be some place
8 at 9 o'clock and Mr. Glaze was either going to take him there
9 or he would going to use his own car to go there.

10 Mr. Glaze is clearly using the car at this time
11 with Mr. Morris' permission, whether he loaned it to him
12 four months earlier or on that particular day, he's using
13 the car with Mr. Morris' permission.

14 THE COURT: I don't think that renders this
15 inadmissible which is your contention.

16 MR. GOTKIN: You know my problem, your Honor.

17 THE COURT: I understand your problem.

18 MR. GOTKIN: Secondly, is this, your Honor, that
19 according to some of the 3500 material, specifically the
20 report of investigation dated April 23, 1974, it says --
21 what I assume is going to happen now is that the conversation
22 is going to be asked of this witness, when we just took
23 the break, and she's going to say, and correct me if I am
24 wrong, Ms. Cushman, was that Morris was on furlough from
25 Rahway State Prison and had to return by 9 P.M.

1 MS. CUSHMAN: She's not saying that.

2 MR. GOTKIN: Judge, look, it's right here.

3 THE COURT: I know that, but she's going to leave
4 it out.

5 MR. GOTKIN: That's all he said according to this
6 report. That's the whole conversation according to the report.

7 MS. CUSHMAN: The report doesn't purport to
8 be absolutely complete in every single word that was spoken.
9 It's the substance of the conversation.

10 MR. GOTKIN: You mean to say if he said something
11 about drugs she wouldn't put it down in the report?

12 MS. CUSHMAN: Nobody said that this witness is
13 going to testify about drugs.

14 MR. GOTKIN: Could we just have it now what she's
15 going to say? Can we have it now?

16 MS. CUSHMAN: What she's going to testify is that
17 they talked that Mr. Morris stated that he was very anxious
18 for Mr. Glaze to return with his car, because he, Mr. Morris,
19 had to be some place by 9 o'clock and also that there was
20 conversation about a party that would be held in the Kasbah
21 Bar in July for John Morris.

22 MR. GOTKIN: That's not too bad, but the inference
23 is he had to make some deals at night, he had to get
24 back to jail. He was on work release, your Honor. This
25

1
2 is unfair, Judge. He has to get the car back so he could
3 be driven back to Rahway State Prison, your Honor. That's
4 why.

5 THE COURT: I know, Mr. Gotkin, but the fact
6 remains that apparently that car was used to transport
7 heroin to the bar.

8 MS. CUSHMAN: I don't believe Mr. Beller's summation
9 is planning to argue that Mr. Morris was making deals that
10 night.

11 MR. GOTKIN: But your Honor, it's unfair. The
12 inference about the car. A man goes to jail, he loans his
13 friend the car. The man had the car for a year before that
14 time. He didn't have any control over that car.

15 THE COURT: You put that together with what Mrs.
16 Ladd testified and it's another mosaic in the picture.

17 MR. GOTKIN: Do you think I got that out of Mrs.
18 Ladd that he gave the car to Solon Glaze? I don't think
19 I ever questioned her about that.

20 THE COURT: No.

21 MR. GOTKIN: Could I recall someone if I have to
22 to get this in so I won't have to put my man on the stand
23 to disclose that he was in jail, your Honor, at this time?
24 You see my problem, Judge.

25 THE COURT: I know. You solve it in whatever

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dwh Johnson-direct 5543
way you feel is appropriate. I'm sure that any witness you
feel to subpoena --

MR. GOTKIN: Can we have a stipulation from the
government that since July, 1973, Solon Glaze had been using
John Morris' car. John Morris did not have control of that
automobile from July, '73, until July, '74?

THE COURT: Apparently not. Would you stipulate
to that?

MS. CUSHMAN: No.

MR. GOTKIN: Then, Judge, I would object to this
strenuously, your Honor. I have a problem, Judge.

THE COURT: I'm afraid I must overrule your
objection.

MR. FRANKEL: Your Honor, Mr. Sear said I could
state for the record that with respect to Exhibit 78B and
C for identification that the initials up on top JWA, and
the date 4-23-76 were made by that officer. They're his
initials, of course your Honor has reserved decision.

THE COURT: Right.

MR. GOTKIN: Judge, U.S. v. Adams, 385, Fed. 2d,
548. It's a fairly old case. Second Circuit 1967.

It says in substance that there should not be
admitted conversations about transactions which never
occurred, and those which did not take place, your Honor.

LETTER FROM U.S. DEPARTMENT OF JUSTICE TO MARTIN GOTKIN

DATED JUNE 9, 1976

United States Department of Justice

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

ONE ST. ANDREW'S PLAZA

NEW YORK, NEW YORK 10007

CC:mkb

June 9, 1976

Martin Gotkin, Esq.
250 West 57th Street
New York, New York 10019

RE: United States v. John Morris
76 Cr. 324

Dear Mr. Gotkin:

This is to inform you that at the trial of this case witnesses will testify that Mr. Morris was present during the sale of a quantity of heroin by Solon Glaze in the vicinity of the Kasbah Lounge, 55 West 106th Street, New York City, on April 19, 1974, and that a car registered to your client was used during that transaction.

Very truly yours,

ROBERT B. FISKE, JR.
United States Attorney

By:

Constance Cushman
CONSTANCE CUSHMAN
Assistant United States Attorney
Telephone: (212) 791-1930

Enclosures

cc: Honorable Richard Owen
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007



LETTER FROM RAHWAY STATE PRISON TO MARTIN GOTKIN
DATED JUNE 29, 1976

PHONE 888-2060
AREA CODE 201



STATE PRISON, RAHWAY
RAHWAY, N. J. 07065

June 29, 1976

Martin E. Gotkin, Attorney
250 West 57th Street
New York, N.Y. 10019

RE: John Morris #53987

Dear Sir:

The above mentioned inmate was received at Rahway State Prison on 11/21/73. He was a resident of this institution until 7/9/74, during which time he had received furloughs on 3/27/74 to 3/30/74, 4/17/74 to 4/20/74, 5/17/74 to 5/20/74, 6/5/74 to 6/8/74, 7/5/74 to 7/8/74 and he was released on 7/9/74.

Very truly yours,

A handwritten signature in cursive script that reads "Howard Beyer".

Howard Beyer,
Senior Classification Officer

mb

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee

- against -

JOHN MORRIS, a/k/a "PAPERS",
Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, Victor Ortega, being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 1715 Lacombe Avenue; Bronx, New York

That on the 12th day of April, 19 77 at 1 St. Andrews Plaza
New York, N. Y.

deponent served the annexed

Brief & Appendix

Robert Fiske
U.S. Attorney

upon

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 12th
day of April, 19 77

Victor Ortega
Victor Ortega

Robert T. Brin
NOTARY U.S.C. State of New York
No. 21 0418950
Qualified in New York County
Commission Expires March 30, 1977